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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 418

A. B. HALE, AS CHAIRMAN, AND E. A. McCOLSKEY ET AL., ETC.,

Appellants,

vs.

BIMCO TRADING, INC., AND BROWARD COUNTY PORT AUTHORITY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

MARTIN H. LONG,
R. R. SAUNDERS,
Counsel for Appellees.

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STATEMENT MAKING AGAINST JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

Now come the plaintiffs (appellees), by their undersigned attorneys, and, in accordance with the provisions of Paragraph 3, Rule 12, of the Rules of the Supreme Court of the United States, submit the following statement disclosing matter and grounds making against the jurisdiction of the Supreme Court of the United States to review, upon ap-

peal, the final decree entered in this cause on the 14th day of June, A. D. 1938, and moves the Court to dismiss this appeal on the grounds hereinafter stated and upon other grounds; and the plaintiffs (appellees) also move the Court to affirm the orders and decrees of the District Court herein upon the grounds hereinafter stated and other grounds:

(a) A mandamus action was brought against the defendants (appellants) in the Supreme Court of Florida to compel the enforcement of that certain Act of the Legislature of the State of Florida, known as Senate Bill No. 760 of 1937, which Act is set out in full in the defendants' (appellants') "Jurisdictional Statement", and the said Supreme Court, on October 12, 1937, overruled a demurrer to and motion to quash the alternative writ, allowing the respondents (appellants) ten days within which to file an answer or return, in default of which, a peremptory writ would issue, the opinion of said Supreme Court being reported in the case of *State ex rel, Florida Portland Cement Co.* v. *Hale et al.*, 176 So. 577. The respondents (appellants) failed to file an answer or return within the ten days allowed, thereby becoming in default, and then announced, or caused to be announced, through the public press, that they would forthwith undertake the enforcement of the said Act. Thereafter, on November 4, 1937, plaintiff, Bimco Trading, Inc., filed its bill of complaint in the United States District Court in and for the Northern District of Florida, seeking to enjoin the defendants (appellants) from enforcing the said Act. The defendants (appellants), on November 24, 1937, filed a motion to dismiss the said bill of complaint.

On the 19th day of November, A. D. 1937, the Supreme Court of Florida issued a peremptory writ of mandamus

in the case of *State ex rel. Florida Portland Cement Co.* v. *Hale et al.*, above referred to. Several days thereafter, on the 26th day of November, A. D. 1937, a three-judge statutory court convoked under Section 266 of the Judicial Code, being Section 380, Title 28, U. S. C. A., upon a hearing, granted an interlocutory injunction, as prayed in the above mentioned bill of complaint, temporarily enjoining and restraining the defendants (appellants) from enforcing the said Act, in certain respects.

After the granting of the interlocutory injunction as aforesaid, the defendants (appellants), did not take an appeal from the order granting the said injunction, direct to the Supreme Court of the United States as permitted by Section 266 of the Judicial Code, being Section 380, Title 28, U. S. C. A., but pressed to a hearing and disposition before the same three-judge court, their aforementioned motion to dismiss plaintiffs' (appellees') bill of complaint. This said motion to dismiss was heard by the court on March 3rd, 1938, and on the same day, the court entered an order overruling and denying said motion, and allowing defendants (appellants) thirty days within which to answer. The defendants (appellants) failed to file an answer or any other pleadings and thereby admitted the allegations of the bill of complaint and accordingly, on June 14th, 1938, a default and final decree was entered, from which defendants (appellants) now take this appeal:

(b) The enforcement of the said Act would violate certain treaties and trade agreements entered into between the United States and certain foreign countries, all as appears from the affidavits of the Honorable Cordell Hull, Secretary of State, filed in this cause.

(c) The only real questions involved in this appeal have been previously decided by the Supreme Court of the United States in the following cases:

D. E. Foote & Co. v. *Stanley*, 232 U. S. 494, 58 L. Ed. 698;

Voight v. *Wright*, 141 U. S. 62, 35 L. Ed. 638;

Brimmer v. *Rebman*, 138 U. S. 78, 34 L. Ed. 862;

Lawrence v. *St. Louis-San Francisco Railway Co.*, 274 U. S. 588, 591, 71 L. Ed. 1219, 1222;

Arkansas Railroad Commission v. *Chicago, Rock Island & Pacific Railroad Co.*, 274 U. S. 597, 598, 71 L. Ed. 1224, 1226;

Virginia Railway Co. v. *United States*, 272 U. S. 658, 71 L. Ed. 463.

These decisions are all contrary to the contentions made in this appeal by the defendants (appellants) and completely justify a dismissal of this appeal or an affirmance of the orders and decrees of the District Court.

Respectfully submitted,

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Attorney for Bimco Trading, Inc.
R. R. SAUNDERS,
Attorney for Broward County Port Authority.